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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 98

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

—v.—

METROPOLITAN LIFE INSURANCE COMPANY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

MEMORANDUM ON BEHALF OF METROPOLITAN LIFE INSURANCE COMPANY

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THOMAS F. DELANEY
Of Counsel

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 1128

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

—v.—

METROPOLITAN LIFE INSURANCE COMPANY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

MEMORANDUM ON BEHALF OF METROPOLITAN LIFE INSURANCE COMPANY

The National Labor Relations Board found in this case that a single district office of Metropolitan Life Insurance Company constituted an appropriate unit for collective bargaining. Insurance Workers International Union, AFL-CIO (the "Union") was certified as the bargaining representative for that unit. The Company refused to bargain with the Union, claiming that the unit determination was erroneous and beyond the Board's power.

The question thus presented was whether the Board had violated Section 9(c)(5) of the National Labor Relations Act which provides that, in determining an appropriate bargaining unit, "the extent to which the employees have organized shall not be controlling." The Court of Appeals for the First Circuit held that the Board had violated the statute and set the Board's order aside.

Of Metropolitan's eight district offices in Rhode Island, the Union succeeded in organizing only one, the one located in Woonsocket which is part of the greater Providence metropolitan area. That one office the Board found to be an appropriate bargaining unit and refused to include in the unit any of the other seven offices, all also located in metropolitan Providence.

The court below reviewed the action of the Board in the light of its actions in other insurance company cases, and concluded (327 F. 2d 906, 910-911):

> "In short, the Union naturally wants units in which it can win elections and on the basis of the Board majority's actions, which speak more clearly than its words, it seems to us evident that in this case the Board majority in keeping with its apparent practice in recent years has given the Union the unit it wants. In the absence of any statement by the Board majority of any other rational basis for its varying unit determinations, we can only conclude that the two member Board minority is correct in its charge that the majority has indeed reverted to its pre-1944 policy of regarding the extent of union organization as controlling in violation of §9(c)(5) of the Act."

Concededly, the decision below is in conflict with Third and Sixth Circuit decisions on the same issue: *Metropolitan Life Insurance Company* v. *National Labor Relations Board*, 328 F. 2d 820 (3rd Cir. Feb. 18, 1964), *cert. pending*, No. 982, this Term; *Metropolitan Life Insurance Company* v. *National Labor Relations Board*, —— F. 2d —— (6th Cir. Apr. 11, 1964). It appears also to be in conflict with *National Labor Relations Board* v. *Quaker City Life Insurance Company*, 319 F. 2d 690 (4th Cir. 1963). However, it is in accord with the dissenting opinion in the *Quaker City*

case and the dissenting opinions of members of the Board in the instant and other cases.

We submit that this conflict among Circuits warrants resolution by this Court. Metropolitan Life Insurance Company has filed a petition for certiorari in the Third Circuit case, No. 982, this Term, and intends to file a petition for certiorari in the Sixth Circuit case. If these petitions are granted, we do not oppose the granting of the present petition.

Respectfully submitted,

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June 17, 1964.